IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4873 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRIKABEN ROHITBHAI PATEL

Versus

GENERAL MANAGER

Appearance:

MR NM KAPADIA for Petitioner

MR HV CHHATRAPATI for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/09/2000

ORAL JUDGEMENT

Rule. Mr Chhatrapati and Ms Davawala, learned counsel for respondent Nos. 1 and 2 respectively waive service of Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. In this petition under Articles 226 of the Constitution, petitioner-Smt Chandrikaben Rohitbhai Patel has prayed for directions against Reserve Bank of India (General Manager, Exchange Control Department, Ahmedabad)

and the Assistant Director, Enforcement Directorate (FERA), Ahmedabad to cancel the order of blocking of FDRs listed in Annexure "D" to the petition belonging to the petitioner and intimate the same to the respective banks and to the petitioner. The petitioner has also prayed for a writ to direct the Assistant Director, Enforcement Directorate (FERA) to release all the FDRs listed in Annexure "D".

3. It appears that the petitioner's husband Rohitbhai Patel and his brother Maheshkumar @ Kiranbhai Kirtibhai Bhikhabhai Patel were found to have been involved in violations of the Foreign Exchange Regulation Act, 1973 (FERA). The search was carried out at the residential premises of the petitioner's husband on 1.4.1987 under the FERA. In that search certain Indian currency, foreign currency, as well as certain documents were seized. The investigation carried out revealed that the husband of the petitioner as well as the brother-in-law of the petitioner had been carrying out transaction in violation of FERA Act, 1973. It was also found during investigation that the amount received by the petitioner's husband-Rohitbhai B. Patel in violation of FERA Act was partly invested in Fixed Deposit Receipt Nos. 6131, 6132, 6133, 6134, 6135, 6136, 6137, 181, 182, 183 and 184 maintained in the name of Nilaben S. Patel, Shantilal G. Patel, Nilaben S. Patel and Shantilal G. Patel, Deepikaben S. Patel, Mitalkumar S. Patel, Neelaben S. Patel totalling to Rs.50,000/- in Anand People Co-operative Bank Ltd., Anand. Under such circumstances, the Reserve Bank of India, Ahmedabad was requested to give appropriate directions to Anand People Co-operative Bank Ltd., Anand to block the operations of the said FDRs, thereafter necessary adjudication proceedings were initiated against the petitioner's husband invoking the confiscation clause of section 63 of FERA Act, 1973 in respect of FDRs where the amount was found to be out of the amounts involved in contravention of FERA Act, 1973. These adjudication proceedings have since been completed and adjudication order dated 17.12.1999 of the Special Director, Enforcement Directorate, Mumbai was passed in which the Special Director, Enforcement Directorate has ordered the aforesaid FDRs of Rs.50,000/- to be confiscated to the Central Government Account alongwith the interest accrued thereon.

4. The petitioner's grievance in this petition is that while the petitioner's husband has challenged the aforesaid order dated 17.12.1999 in appeal, there is no justification in blocking for the last 13 years the other

FDRs which are in the name of the petitioner and which are not in the name of petitioner's husband-Rohitbhai Bhikhabhai Patel or his bother Maheshkumar @ Kiranbhai Kirtibhai Bhikhabhai Patel. It is stated that the petitioner has been requesting respondent No. 2 to release the other FDRs in the name of the petitioner. Reference is also made to the letters including letters dated 23.4.1999 (Annexure "I") and 1.2.2000 (Page 93).

5. In response to the notice issued by the Court, the Assistant Director, Enforcement Director has filed affidavit in reply dated 10.2.2000 wherein no dispute is raised about the aforesaid basic facts. No justification is given for blocking the FDRs other than the FDRs for Rs.50,000/- in which investments are made by Rohitbhai Bhikhabhai Patel and Maheshkumar @ Kiranbhai @ Kirtibhai Bhikhabhai Patel out of the amounts involved in violation of the FERA Act.

6. Having heard the learned counsel for the petitioner and the learned counsel for the Reserve Bank of India and the learned Addl. Standing Counsel for the Union of India appearing on behalf of the Assistant Director, Enforcement Directorate (FERA), and having perused the relevant pleadings, it appears to the Court that since the FDRs have been blocked for the last about 13 years and since no justification is given for blocking the FDRs in the name of the petitioner who is not found to have been involved in any contravention of the FERA Act nor is there any allegation that the amounts standing in the name of the petitioner are out of the amounts involved in violation of the FERA Act, the petition deserves to be allowed.

7. Accordingly, the respondents are directed to issue appropriate directions to the concerned banks to release the FDRs which are in the name of the petitioner and are not in the name of Rohitbhai Bhikhabhai Patel or Maheshkumar @ Kiranbhai @ Kirtibhai Bhikhabhai Patel. This direction shall be complied with within two weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

September 21, 2000 (M.S. Shah, J.)
sundar/-